HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A. No. 546 of 2005

Appellants
1. Om Prakash Gajendra, S/o Late Punit Ram Gajendra, aged 24 years, Vehicle owner, R/o Loco Colony, Bilaspur (C.G.).
2. Vinod Singh, S/o R. B. Singh, aged about 33 years, R/o Hemu Nagar, Bilaspur (C.G.).

Versus

Respondents
1. Smt. Vanshraji, Wd/o Late Ram Kumar, aged about 45 years.
2. Sant Ram S/o Late Ram Kumar, aged about 23 years, both by caste- Kenwat, R/o Old Mines Bhatgaon Colliery, P.S. Pratappur, District- Surajpur (C.G.).
3. National Insurance Company Ltd. Through Branch Manager, Bilaspur, Zonal Office, Raipur (C.G.).
4. Anil Kumar Thakur, S/o Shivpal Ram, aged about 22 years, by occupation- Driver, R/o Village- Sohagpur, P.S. Pratappur, District- Sarguja (C.G.).
5. Ganesh Prasad Sahu, S/o Abhinath Sahu, aged about 28 years, Vehicle Owner, R/o Village- Jhopradapara, Hardi Road, Bilaspur (C.G.).

DB: Hon'ble Shri Justice S. R. Nayak, C.J.
& Hon'ble Shri Justice Satish K. Agnihotri, J.

Mr. D. N. Prajapati, Advocate for the appellants.

ORAL ORDER

(5th December 2005)

The following order of the Court was passed by S. R. Nayak, C.J.

1. The owner of the motor vehicle involved in the accident being aggrieved by the award dated 31.1.2005 passed in Claim Case No. 7/2004 by Third Additional Motor Accident Claims Tribunal (F.T.C.) Soorajpur, District-Surguja has preferred this appeal. The fact that the accident had occurred due to the rash and negligent driving of the driver of the motor vehicle owned by the petitioner/appellant is not in dispute. Therefore, there is no need

for us to review the finding recorded by the Tribunal on the issue relating to the actionable negligence.

2. While assailing the impugned award Shri Prajapati would contend that (i) the Tribunal has seriously erred in law in taking the monthly income of the deceased as Rs. 6164/-, and as per the evidence of his son/claimant, the deceased was earning only Rs. 50/- to Rs. 60/- per day; (ii) that on the date of accident, the deceased was 60 years of age and the Tribunal wrongly took the age of the deceased as 50 years and applied multiplier 13; (iii) that the Tribunal has erred in law in exonerating the Insurance Company from the liability to pay compensation on the ground that the insurance policy produced by the appellant is not the one issued by the respondent/Insurance Company.

3. Having heard learned counsel for the appellant for considerable time, after having perused the original records placed before us, we do not find any merit in any of the above contentions urged before us by learned counsel.

4. In support of the income of the deceased the claimants have produced salary certificate marked as Exhibit A/9, issued by the Management of the S.E.C.L. as per which the salary of the deceased was Rs. 6164/-. After allowing permissible deductions for the purpose of assessing 'loss of dependency', the monthly income of the deceased was taken as Rs. 4109/-. Even the multiplier applied by the Tribunal for assessing the loss of dependency taking the age of the deceased as 50 years is unexceptionable in view of the documentary evidence produced in the case. Although it was asserted in the statement of objection filed by the appellant that the deceased was aged 60 years, no proof in support of that claim was led before the Tribunal.

5. This takes us to the question whether the Tribunal is justified in exonerating the Insurance Company from the liability of paying compensation. The Tribunal having appreciated the material documents and the oral evidence has opined that the Insurance Policy produced by the petitioner/appellant is a concocted document. In arriving at that conclusion, the Tribunal has placed reliance on the oral evidence of the Manager of the Insurance Company. Since the Insurance Company has denied the issuance of the policy in favour of the appellant, it was the onus of the appellant to discharge the onus that as a matter of fact that the respondent/Insurance Company has issued the policy. The appellant has utterly failed to discharge that onus. Therefore, we cannot take any exception to the order of the award of the Tribunal exempting the Insurance Company from the liability of paying compensation to the dependents of the deceased. No other point was urged before us. The appeal is devoid of merit. It is accordingly dismissed. No costs.

Sd/-
Chief Justice

Sd/-
SATISH K. ANGNIHOTRI
Judge

Thakur